THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 19738 of 1996

Order:

Assailing the proceedings No. E4/785(14)/95-FM, dated 13.09.1996, addressed by respondent No.3-Depot Manager, Falaknuma Depot, to the Depot Manager, Dilsukhnagar Depot, informing him that the petitioner, who was reverted from the post of ADC/Controller to the post of Conductor and posted to Dilsukhnagar Depot, by proceedings in PO-I:HCR Office Order No.C3/785(70)/95-CR, dated 14.08.1996, has been relieved from the post of Controller/ADC w.e.f. 13.09.1996 to effect his reversion to the post of Conductor, the petitioner filed this writ petition.

The petitioner, who joined the service of the respondents-APSRTC as Conductor on 04.09.1973, states that he was promoted to the post of ADC/Controller on 10.02.1995 based on his seniority. While so, the Personnel Officer, Hyderabad City Region, vide Office Order No. C2/255(14)/95-HCR, dated 17.05.1995, cancelled the promotion of the petitioner, with instructions to the Depot Manager, Faluknuma, to relieve the petitioner, and in pursuance thereof, when the Depot Manager, Faluknuma, vide Relieving Order
No. E3/255(2)/95-FM, dated 29.05.2005, sought to relieve the petitioner, the petitioner questioning the said Relieving Order, filed writ petition in W.P. No. 10844 of 1995 and obtained interim order in W.P.M.P. No. 13320 of 1995 on 31.05.1995 to the effect that if he is not yet relieved on reversion, he shall not be relieved till 12.06.1995. To vacate the said interim order, the respondents filed petition in W.V.M.P. No. 2073 of 1995, and this Court by orders dated 08.11.1995, modified the interim order passed in W.P.M.P. No. 13320 of 1995, making it absolute by recording the statement of the learned Standing Counsel for the respondents that no junior to the petitioner is being continued in a higher post and the petitioner will not be reverted for accommodating his juniors in the cadre of Conductors. Pursuant to the modified orders passed by this Court, by reason of the order impugned in this writ petition, the respondents sought to effect the order of reversion of the petitioner from the post of ADC/Controller by relieving him from the said post.

The learned counsel for the petitioner submitted that the transfer order dated 07.01.1978, passed by the respondents transferring the petitioner from Hanumakonda Depot to Charminar Depot, based on which the respondents contend that the petitioner's seniority was to be reckoned from the date he resumed duty in Hyderabad City Division, was not served on the petitioner, and in fact, there is no endorsement in the transfer order that the petitioner's seniority would be reckoned from the date of his resuming duty in Hyderabad City Region, and in the absence of any such endorsement, the action of the respondents in not reckoning his seniority from the date of his initial appointment as Conductor, is illegal and arbitrary. Relying on Regulation 3(a) of A.P. State Road Transport Corporation Employees (Service) Regulations, 1964, which deals with "Seniority", and a judgment of this Court in W.P. No. 1885 of 1993, dated 09.07.1998, the learned counsel for the petitioner submitted that the petitioner having not been reduced to a lower rank as a measure of punishment at any time during his service, his seniority in the post of Conductor should be counted from the date of his appointment.

He submitted that the petitioner earlier filed writ petition in W.P. No. 10844 of 1995 assailing similar order of reversion, passed by the respondents reverting him from the post of ADC/Controller to the post of Conductor, and having regard to the interim orders dated 31.05.1995, passed by this Court in the interim application filed therein in W.P.M.P. No. 13320 of 1995, which were later made absolute vide orders dated 08.11.1995, passed in W.V.M.P. No. 2073 of 1995, by recording the statement of the learned Standing Counsel for the respondents that no junior to the petitioner is being continued in a higher post and that petitioner will not be reverted for accommodating his juniors in the cadre of Conductors, and in terms of which, the writ petition itself was ultimately dismissed by orders dated 18.06.1997, the respondents could not have passed the impugned orders for effecting his reversion from the post of ADC/Controller to the post of Conductor, which is not only illegal and arbitrary, but also violative the orders of this Court. He thus prayed that the impugned order be set aside and the writ petition be allowed.

The respondents-Corporation filed detailed counter affidavit. The learned Standing Counsel for the respondents reiterating the counter-averments submitted that the petitioner was initially appointed as Conductor in Charminar Depot in Hyderabad City Division on

04.09.1973. While finalizing the Divisional seniorities, as the petitioner opted for Warangal Division, the respondents by orders dated 16.09.1976 relieved from Hyderabad City Division to work in Warangal Division. After finalization of the seniority lists, the Vice-Chairman and General Manager, issued Circular
No. PD-111/1977-78, dated 08.09.1977, framing guidelines for transfer. On 03.01.1978, the petitioner while working at Hanamkonda Depot (Warangal Division), applied for mutual transfer from Hanamkonda to Charminar Depot and one
G.L. Narayana, Conductor of Charminar Depot agreed to be transferred to Hanamkonda Depot.

The respondents having regard to para 5.3 of Circular
No. PD-111/1977-78, dated 08.09.1977, which states that transfers ordered outside the seniority area should result in the employee becoming junior-most in the cadre in the seniority in the area in which he is to be transferred, issued orders dated 07.01.1978, transferring the petitioner from Hanamkonda Depot (Warangal Division) to Charminar Depot (Hyderabad City Division) with a specific condition that his seniority would be reckoned in the category of Conductors in Hyderabad City Division from the date he resumes duty in that Division. In terms of the said transfer order, the petitioner reported at Charminar Depot on 02.02.1978. The petitioner's seniority, in view of his request for transfer to Charminar Depot, was to be reckoned from 02.02.1998, the date on which he resumed duty in Charminar Depot.
But on 01.04.1995, when the seniority list of Conductors of Hyderabad City Division was prepared, by mistake the name of the petitioner, was shown at Sl. No. 456 by taking his date of initial appointment as Conductor i.e. 04.09.1973, without reference to the fact that he was transferred to Hyderabad City Division, vide orders dated 07.01.1978, on loss of seniority and that his seniority in Hyderabad City Division has to be reckoned from 02.02.1978, namely the date on which he resumed duty.

Based on such erroneous seniority list, the petitioner was promoted as ADC/Controller, vide office order dated 20.02.1995, and posted to Falaknuma Depot. The respondents having realized the mistake, corrected the seniority list prepared on 01.04.1995, by placing the petitioner at Sl. No. 1134-A, and as the petitioner became much junior to others, who were not promoted, the respondents vide orders dated 17.05.1995, cancelled the promotion of the petitioner with

instructions to the authorities relieve him immediately, and in pursuance thereof, when the respondents vide orders dated 29.05.2005, sought to relieve the petitioner, he filed writ petition in W.P. No. 10844 of 1995 and obtained interim orders dated 31.05.1995 in W.P.M.P. No. 13320 of 1995, and by virtue of the said interim orders, he is continuing as Assistant Depot Clerk. The said interim order, however, by order dated 08.11.1995, passed in W.V.M.P. No. 2073 of 1995, was modified directing that the petitioner should be continued as long as his juniors are being continued in service in the post of ADC/Controller, and ultimately, the writ petition itself, by order dated 18.06.1997 of a Division Bench of this Court, was dismissed. He submitted that since no junior to the petitioner is being continued as ADC/Controller, and persons seniors to the petitioner, were working as Conductors, and therefore, to effect the reversion of the petitioner from the post of ADC/Controller to the post of Conductor, the respondents issued the impugned order dated 13.09.1996, and no exception can be taken thereto.

He submitted that the representation of the petitioner dated 14.09.1996 requesting the respondents to withdraw the order of reversion, was considered and rejected by order dated 14.10.1996 of the Regional Manager, Hyderabad City Region.

He submitted that the transfer order dated 07.01.1978, passed by the respondents transferring the petitioner from Hanumakonda Depot in Warangal Division to Charminar Depot in Hyderabad City Division, having been made on his request, and on condition that he would forego seniority in Warangal Division, and that his seniority in the post would be counted from the date he would resume duty in the transferred Division, namely Hyderabad City Division, the petitioner cannot claim seniority in the post of Conductor from the date of his initial appointment. In support of this submission, he placed reliance on a judgment of a Division Bench of this Court in **A.P.S. Road Transport Corp. v. B. Sreenivasulu**[1], which considered the effect of Regulation 3 of A.P. State Road Transport Corporation Employees (Service) Regulations, 1964 and Clause 5.3 of the Circular dated 08.09.1977, on which the counsel for the petitioner and the learned Standing Counsel for the respondents respectively, placed heavy reliance in support of their cases, and the judgments of the apex Court in **Joyachan M. Sebastian v. Director General**[2] and **A.P.S.R.T.C. v.**

V. Veeraiah[3].

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent-Corporation, and perused the record produced by the respondents.

The petitioner was appointed as Conductor on 04.09.1973 and posted to work at Charminar Depot in Hyderabad City Region. When Divisional seniority lists were being finalized, the petitioner, it is stated by the respondents, opted for Warangal Division. And based on his option, the respondents by orders dated 16.09.1976, transferred him to Warangal Division. Subsequent to finalization of the seniority list, it appears that the Vice-Chairman and General Manager, issued Circular No.PD-111/1977-78, dated 08.09.1977, prescribing guidelines for transfer of employees from one place to another.

While so, on 03.01.1978, the petitioner, who is working at Hanumakonda Depot in Warangal Division and another person, namely Sri. G.L. Narayana, who is working as Conductor at Charminar Depot in Hyderabad City Division, have sought for mutual transfer. On their request, having regard to para 5.3 of Circular No. PD-111/1977-78, dated 08.09.1977, the respondents vide orders dated 07.01.1978, transferred the petitioner from Hanumakonda Depot in Warangal Division to Charminar Depot in Hyderabad City Region, subject to the condition that the petitioner's seniority will be reckoned in the category of Conductors in City Division from the date he resumes duty in that Division. Though the respondents placing reliance on **A.P.S. Road Transport Corp. v. B. Sreenivasulu** contend that the petitioner having been transferred on his own request, should be junior-most in the new Division, and he cannot claim seniority of the previous Division also, the fact remains, another Division Bench of this Court in W.A.
No. 1391 of 1998, vide judgment dated 19.12.2000, having considered the effect of the judgment of the Division Bench in **A.P.S. Road Transport Corp. v. B. Sreenivasulu**, held that even though the person transferred on request has to take the place at the bottom in the seniority list at the transferred place, but he is entitled to be considered for promotion to the next higher post, based on his seniority at the previous place. The learned Standing Counsel for the respondents did not dispute this fact.

Further, the petitioner having not been reduced in rank as a measure of punishment, having regard to Regulation 3(a) of A.P. State Road Transport Corporation Employees (Service) Regulations, 1964, is entitled for counting of his seniority in the post of Conductor from the date of his initial appointment and not from the date he resumed duty at the station to which he was transferred. Therefore, the action of the respondents, in not reckoning the seniority of the petitioner from the date of his initial appointment in the post of Conductor and reckoning his seniority from the date of his joining at the transferred Depot, for the purpose of promotion, is illegal and arbitrary.

Be that as it may, during the pendency of the writ petition, it is submitted by the learned Standing Counsel for the respondents, and admitted to by the learned counsel for the petitioner that the petitioner was promoted as Assistant Depot Clerk and later to the post of Depot Clerk, and presently he is working as Depot Clerk.

For the foregoing reasons, the writ petition deserves to be allowed, and it is accordingly allowed and the impugned order is set aside. No costs.

_____

N.V. RAMANA, J.

Date: 3rd January, 2007.
KSR

---

[1] 1995 (3) ALD 1030 (DB)

[2] (1996) 10 SCC 291

[3] Civil Appeal No. 2267 of 2000, dated 16.03.2000